

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Unlicensed Operation in the TV Broadcast Bands)	ET Docket No. 04-186
)	
Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band)	ET Docket No. 02-380
)	
To: The Commission		

**SUPPLEMENTAL COMMENTS
OF THE OPEN MOBILE VIDEO COALITION**

The Open Mobile Video Coalition (“OMVC”)¹ hereby files these supplemental comments in the above-captioned proceeding to stress that the Commission should not authorize the use of unlicensed white spaces devices without first taking into account the potential for interference to mobile television services. OMVC joined the Emergency Request filed on October 17 by various parties asking that the Commission put out for public comment the 400-page Office of Engineering and Technology (“OET”) report that was released on October 15 and that the Commission carefully consider the comments it receives before adopting rules for unlicensed white spaces devices.

OMVC was formed 18 months ago to promote the rapid development and deployment of mobile television services for the American public making use of the new capabilities of digital television technology. A critical, major step toward this goal is the

¹ The Open Mobile Video Coalition is an alliance of over 800 commercial and public television stations committed to the development of mobile digital television.

preparation and adoption of a mobile video standard. Just last month, the Advanced Television Standards Committee issued a ballot for elevation to Candidate Standard, a 900-page backwards compatible specification for broadcast mobile video. In addition, the industry is on schedule to begin roll-out of these new services of such public interest benefit in 2009. Though not completed, the progress toward inauguration of these innovative services has been stunning.

The Commission is aware of the promising potential of broadcast mobile video services.² It is also aware of the potential for operations in the white spaces to cause interferences to and stymie the inauguration of broadcast mobile video services to the benefit of the American public. That is why OET stated in the open meeting it held prior to the launch of its white spaces testing that it would include tests on the impact of unlicensed device operations on broadcast mobile video. But in OET's October 15 400-page report, there is not a single mention of this issue, and, to OMVC's knowledge, no interference testing was undertaken. This fact underscores the need for public comment on the OET report and a more fundamental obligation to better understand the public interest impairments of authorizing unlicensed mobile and portable devices in the so-called white spaces.

I. ANY AUTHORIZATION OF UNLICENSED WHITE SPACES DEVICES MUST TAKE INTO ACCOUNT THE POTENTIAL FOR INTERFERENCE TO MOBILE TELEVISION.

Mobile television offers the American public significant benefits. Television broadcasters already have a record of delivering local programming, including local news, weather, and election coverage, to the American living room. Mobile television, however, furthers this public service by allowing broadcasters to reach viewers with this localized content

² This is one reason why the Commission is moving toward adoption of rules to govern Distributed Transmission Systems ("DTS") at its open meeting of November 4, 2009. DTS will further facilitate broadcast mobile video.

anytime and anywhere. During times of attack or local weather emergencies, mobile television allows broadcasters to alert the public of breaking news and life-saving information wherever they may be.

Moreover, once available, mobile television is expected to be widely adopted in the United States. Mobile television already is in high demand by users abroad, and it is expected to grow quickly in the United States once deployed. In Japan, for example, mobile TV penetration rates for mobile phones are expected to surpass 60 percent in just a few years, roughly representing a 20 percent increase.³ A recent study by Juniper Research found that the United States will surpass Japan, South Korea, and other countries in 2013 to become the largest market for mobile broadcast television services in terms of end-user revenue.⁴ Furthermore, in just three years, 28.8 million North Americans are expected to watch mobile television.⁵

Despite the critical role that mobile television will play in keeping many Americans safe and informed, nothing in the 400-page OET report provides any indication that testing of mobile video was conducted, despite the fact that OMVC said it would undertake these tests. It is critical that this testing take place because the operation of unlicensed devices in the TV white spaces presents special interference challenges to the public's mobile video services.⁶ Mobile television has a large footprint, especially when DTS technologies are used to deliver this local, over-the-air programming. This is because broadcasters can overcome geographic and

³ Giuseppe Calarco, *Mobile TV Marches On*, EE Times Asia (Aug. 18, 2008).

⁴ Juniper Research, *TV on the Go*, at 3 (Oct. 2008).

⁵ Screen Digest, Press Release, *Mobile TV* (Dec. 2007).

⁶ See Letter from the OMVC Board of Directors to the FCC, ET Docket Nos. 02-380, 04-186 (Oct. 3, 2007).

topographical obstacles to ensure their programming reaches mobile viewers over a large area by using multiple DTS towers.

Given the public benefits of mobile television and the likelihood that this emerging service will be widely adopted nationwide, the Commission should not authorize unlicensed white spaces devices without first considering what impact such operations would have on the public's future mobile television service. Adoption of rules for unlicensed operations without taking this step would violate Commissioner Copps' concern in a different context, "This is not the way to do rational, fact-based, and public interest-minded policy making."⁷

II. THE ABSENCE OF MOBILE VIDEO TESTING DEMONSTRATES THE NEED FOR THE COMMISSION TO SEEK, AND CAREFULLY CONSIDER, PUBLIC COMMENT ON THE OET REPORT.

OET's failure to address mobile video testing in its report illustrates the need for the Commission to seek public comment on the OET report and to carefully consider these comments before making any final decision related to unlicensed white spaces devices. Not only is thoughtful consideration of public input good public policy, but the D.C. Circuit has found that it is necessary administrative practice as well. In *American Radio Relay League v. FCC*,⁸ the D.C. Circuit, quoting the Administrative Procedures Act, emphasized that the notice requirement is intended to "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments" so that "[a]fter consideration of the relevant

⁷ Report and Order and Order on Reconsideration, *2006 Quadrennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB 06-121, et al., 23 FCC Rcd 2010, 2117 (Dec. 18, 2007).

⁸ 524 F.3d 227 (D.C. Cir. 2008).

matter presented,” the agency can properly explain the basis and purpose of the rules it ultimately adopts.⁹ The court concluded that the FCC’s withholding redacted portions of a technical study was improper, not only because it denied the public notice of this information, but also because the Commission’s actions impeded the public’s ability to submit information about the faults with the report and the Commission’s interpretation of the findings contained therein.¹⁰

The same is true here. Despite the absence of any mobile video testing, Chairman Martin announced on the same day the OET report was released that the Commission will vote in its upcoming November 4th open meeting to adopt rules authorizing TV band white space devices based on that report’s conclusions. The Commission is neither seeking public comment on the OET report pursuant to the APA’s notice and comment provisions, nor has the Commission made provision for considering the parties’ comments on the report before deciding whether to authorize unlicensed white spaces devices and under what conditions designed to protect the public’s broadcast services. Rather, the fact that virtually simultaneously with the release of the OET report there was circulated at the Commission a draft decision and set of rules for unlicensed devices makes clear that no meaningful opportunity has been made available for public comment on the OET report and its implications for how the rules should be drafted. Under the reasoning of *American Radio Relay League*, simply making the OET report public is insufficient; the Commission is also obligated to provide the public reasonable time to submit

⁹ 5 U.S.C. § 553(c).

¹⁰ *Am. Radio Relay League*, 524 F.3d at 236 (quoting *Nat’l Ass’n of Regulatory Util. Comm’rs v. FCC*, 737 F.2d 1095, 1121 (D.C. Cir. 1984)).

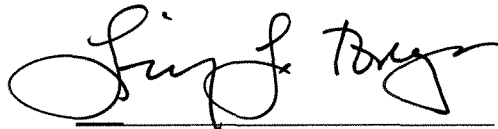
comments, and the Commission should carefully consider these comments before making its decision.

But there is an even more fundamental issue. If authorization of unlicensed devices pursuant to rules would permit interference to and thereby stymie mobile television operations, then that issue must be squared up to and resolved. Given that the OET studies, as reflected in the October 15 report, apparently did not address this issue, additional remedial action is necessary. OET must supplement its report, most likely with additional testing, to deal with the issue of whether unlicensed devices will interfere with this promising public interest dividend from the digital transition.

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For these reasons, OMVC respectfully requests that the Commission require OET to conduct mobile video testing before it adopts rules for the operation of unlicensed white spaces devices. Moreover, the Commission should not only seek public comment on the recently released OET report, but also should seek comment on any subsequent report issued by OET covering mobile video testing. Finally, before adopting any rules, the Commission should carefully consider the comments it receives from the public.

Respectfully submitted,



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